IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRP.No. 730 of 2004()

AGAINST THE ORDER DATED 28/02/2004 IN EP. 63 /2002 IN OS.153/2000 of MUNSIFF COURT, PALA

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REVN. PETITIONER: DECREE HOLDER:

KUNJAN JALADHARAN, MENAMPARAMBIL HOUSE,
RAMAPURAM KARA, RAMAPURAM VILLAGE.

BY ADV. SRI.P.JACOB VARGHESE
SMT.V.A.GANGUJA
SRI.VIVEK VARGHESE P.J.

RESPONDENTS: JUDGMENT DEBTOR:

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1. RAVINDRANATHAN, S/O. PRABHAKARAN,
RESIDING AT KALAPPURACKAL FROM KANDATHIL,
VELLILAPPALLY KARA, VELLILAPPALLY VILLAGE.

2. DHANANJAYAN, DO. DO.

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

C.R.P No. 730 of 2004

Dated this the 7th day of November 2007

ORDER

The decree holder in E.P No.63/2002 in O.S 153/2000 on the file of Munsiff Court, Pala is the revision petitioner. The decree was passed in favour of the revision petitioner in O.S. No.153/2000 restraining the defendants by a permanent prohibitory injunction from trespassing upon the plaint schedule property and also from constructing any motorable road by widening the ridge which the defendants used as a way to their house.

2. The allegation in the E.P is that the judgment debtors/defendants on 26-10-2002 forcibly trespassed upon the plaint schedule property and levelled the ridge and the drain attached to the ridge and constructed a new road of about 2 feet width and thereby violated the decree passed in the suit. The judgment debtors/ defendants filed a joint objection resisting the revision petitioner/decree holder by denying the allegations and contended that they have not made any alteration to the position of the property at the time of decree and that they have not violated the decree in any manner. The court below after recording the evidence held that the revision petitioner/decree holder has not been able to establish the alleged violation of the decree passed by the judgment debtors/defendants and therefore the petition for prosecution is liable to be dismissed.

3. I have perused the records. From the evidence adduced by the revision petitioner/decree holder in support of the Execution petition the court below noted the fact that the revision petitioner/decree holder who was examined as PW2 had admitted that he did not see any incident and his information is only heresy. The witness examined in this case as PW1 who is the Commissioner and also other witnesses and for reasons stated in paragraph 4 of the order under challenge, it appears that the revision petitioner's version is not acceptable for want of corroboration of the Commission report and therefore not appealing to this Court. The court below also examined the earlier Commission report and the present Commission report and came to the conclusion that the alleged levelling was not made one after the passing of the decree as alleged by the revision petitioner/decree holder; but the same levelling was seen before the passing of the decree.

4. In the above said facts and circumstances and evidence, the court below came to the conclusion that the revision petitioner /decree holder has not been able to establish the alleged violation of the decree . The conclusion of facts in the given circumstances is legal and valid. I do not find any reasons to interfere with the findings. There is no merit in this C.R.P and therefore the same is dismissed.

HARUN-UL-RASHID, JUDGE

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